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Office of the City Manager

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Update on the Implementation of Fair and Impartial Policing Task Force
            Recommendations

INTRODUCTION

On February 23rd, 2021 during a City Council Special Meeting, Council referred the recommendations from the Mayor's Fair and Impartial Policing (FIP) Task Force to the Berkeley Police Department for implementation. Quarterly updates were requested by Council and the last quarterly update was provided on October 19, 2021.

CURRENT SITUATION AND ITS EFFECTS

This report provides a quarterly update on the implementation of the Task Force recommendations, and is one year after the original referral. The Police Department was asked to implement the recommendations provided by the FIP Task Force. Implementation of the FIP Task Force recommendations remains a priority of the Berkeley Police Department. The Professional Standards Division Sergeants Ledoux and Lee are responsible for managing the project of implementing the recommendations.

Implementation of the recommendations has necessitated the amendment of departmental policies and establishment of new protocols. As part of the process, members of BPD have met on several occasions with Council and Mayor representatives, a Police Review Commission and now Police Accountability Board member, FIP Task Force members, and the Police Accountability Board Subcommittee on FIP recommendation implementation. During these meetings, the substance and progress on the implementation of the recommendations were discussed and BPD has been provided feedback and background on the various intentions with each respective recommendation.

The following outlines the specific Task Force recommendations and the respective progress:

Implement a New Evidence-Based Traffic Enforcement Model

Task Force Recommendations:
- **Focusing the basis for traffic stops on safety and not just low-level offenses &**
- **Minimize or de-emphasize as a lowest priority, stops for low-level offenses**

   #### *Implementation:*
   Officers have been provided data regarding primary collision factors and have been directed to enforce those violations wherever they are observed. In addition to focusing on enforcement of primary collision factor violations, sworn personnel are also expected to make investigative stops related to criminal intelligence and information brought forth by the community or our investigations. BPD's working group, which is comprised of employees working in every division of the Berkeley Police Department and the City of Berkeley Transportation Division Manager, viewed the primary collision factors and built upon that information by looking further into Berkeley specific collision data as well as the National Highway Traffic Safety administration data concerning vehicle collisions. The working group has identified a focused set of violations that should be an officer's focus while conducting traffic enforcement to promote a safe environment for pedestrians, bicyclists and vehicles in Berkeley. The Working Group developed a three-prong approach that focuses on primary collision factors, community member reports/observations reported to the Berkeley Police Department and community caretaking. Community caretaking functions consider safety violations that aren't always noted as the primary collision factor but can be a significant contributing factor in serious collisions. The Berkeley Police Department will be trained on this three-prong approach to approaching traffic stops based on traffic safety.

   #### *Status:*
   Implementation in progress. Training for all sworn personnel has commenced on this approach to enforcement on traffic safety violations. The Traffic Division and the National Highway Traffic Safety Administration continuously collect and provide the Berkeley Police Department with data on primary collision factors and statistics on violations that impact public safety. These data provide officers with current information on what to educate the community on and what violations to focus enforcement on.

Task Force Recommendation:
- **Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects.**

Implementation:
The Police Department is establishing a precision based policing model that considers data and public safety. This model aims to reduce the number of stops that studies have shown had minimal impact on public safety.

Data driven-tools that enable close to real-time dashboard tracking of calls for service demands have been provided to the Community Services Bureau and Patrol Watch Commanders. The Police Department is working on providing these tools to every officer to incorporate into their daily briefings

The Police department is also exploring the feasibility of a system that employs a feedback loop with information flowing both ways. The current system provides the tracking of calls for service with the goal of call analysis for patrol deployment strategies; the feedback loop would provide information back to the Community Services Bureau and provide an accountability measure so strategies can be evaluated.

Status:
Implementation in Progress – The goal is to have data-driven approaches to violence prevention programs and real time crime and call analysis for patrol deployment strategies. The Police Department continues to develop and deploy data-driven tools to enhance a precision-based policing model and approach to enforcement stops. Ensuring that we implement approaches that identify and work to reduce racial disparities will be a cornerstone to our evidence-based approaches. Berkeley Police Department will continue to only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria. During this quarter we successfully filled one of the two Council approved data analyst positions. This will allow continued development of the evidence-based approaches.

Task Force Recommendation:
- **Reaffirming and clarifying that the Berkeley Police Department will only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.**

Implementation:
Penal code 13519.4 is existing California law that prohibits racial profiling. BPD Policy 401 (Fair and Impartial Policing) also prohibits racial profiling. Section 401.2 explicitly states, "Officers shall not consider race, ethnicity, national origin,

gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities…"

The above policies were reviewed in light of the task force recommendations and found to affirm and clarify police officer responsibilities in stops.

Status:
Recommendation implemented. Ongoing efforts include: BPD will continue to conduct ongoing training in topics such as implicit bias, racial profiling, and procedural justice concepts. BPD will hold all members to Departmental Policies, especially those strictly and clearly prohibiting racial profiling. Further, stops will be information and evidence based. BPD Traffic Bureau will regularly provide data on those primary collision factors that most often result in collisions. BPD data analyst team will continue to analyze these statistics along with crime and location-based information. BPD will work closely and regularly with our Vision Zero partners to use this information to focus enforcement efforts.

Implement Procedural Justice Reforms

Task Force Recommendation:
- **Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops.**

Implementation:
The current Early Warning System was originally issued in 2004 and revised in 2008. The system mandates the monitoring of officer's behavior and performance to include, but not limited to attendance, complaints, use of force incidents, and other factors. The Early Warning System serves as a program that identifies and address behavior or training issues before they become a disciplinary matter. Amendments are being made to our existing policy to specifically identify additional activity that should be considered when applying this policy.

Status:
Implementation in progress. Pursuant to the FIP recommendation and after meeting with the FIP task Force stakeholders, language was added to the current Early Warning System policy to include data around traffic, bicycle, and pedestrian stops as a category that supervisors will consider for early intervention if merited. The new Early Warning System policy is being reviewed by the police union and is in the meet and confer process to ensure that the policy can be properly applied to train, redirect and recognize performance issues and not conflict with disciplinary processes.

Task Force Recommendation:

- **Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback.**

Implementation:

A revised written consent form has been created and amendments are being made to our existing search and seizure policy to require written consent for all consent searches. Consultation with the Alameda County District Attorney was conducted to ensure that policy changes did not have a detrimental effect on charging or prosecution.

Status:

Implementation in progress. The new search and seizure policy is being reviewed by the police union and is in the meet and confer process to consider relevant officer safety concerns. Language in the policy is being drafted to address citizen rights, exigent circumstances as well as officer safety concerns.

Task Force Recommendation:

- **Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.**

Implementation:

On February 10, 2021, updates were completed on Policy 311. Sections 311.5 and 311.6 were modified to reflect the above limitations to warrantless searches. The above policies were reviewed and modified in line with the task force recommendations and departmental goals to build trust and collaborate with the community to address crime and safety concerns.

Status:

Recommendation implemented. The update to Policy 311 limits the searches conducted on individuals on supervised release status.

Task Force Recommendation:

- **Address Profiling by Proxy (PAB Policy Development, Dispatcher Training).**

Implementation:

The Communications Center Operation Manual has been amended to address handling cases involving profiling by proxy. All dispatchers have reviewed the

amended manual and are instructed to be cognizant and screen for profiling by proxy calls.

*Status***:**
Recommendation implemented. Berkeley Police Department will continue to educate and train dispatchers on how to identify and address biased based reporting. Officers and supervisors are also expected to screen profiling by proxy calls. The Department as a whole will continue to seek out and train on anti-bias, implicit bias, and profiling by proxy topics to strengthen our ability to identify and address biased based reporting.

Task Force Recommendation:
- **Fire racist police officers identified through social media and other media screens.**

Implementation:
The following existing policies dictate procedures for investigating employees in this area; these policies adhere to due process and Government Section 3300:

> *Policy 1029 (Employee Speech, Expression and Social Networking) provides accountability to employee personal social media posts. Section 1029.4(b) states "Speech or expression that, while not made pursuant to an official duty, is significantly link to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, or reputation of professionalism of the Berkeley police Department or its employee.*

> *PR 232 (Controversial Discussion), PR 235 (Acts –Statements-By employees), PR 238 (Organizational Membership), and PR 250 (enforcement of Law, Impartiality) are also policies that provide accountability for any racist behaviors.*

The above policies were reviewed in light of the task force recommendations found to provide necessary authority to investigate allegations of racism. Departmental policy clearly identifies discrimination based upon a person's race as misconduct, and requires reporting and prompt investigating of any allegation of racism. Any employee who becomes aware of or observes any discrimination on the basis of a protected class is required to notify a supervisor by the end of their shift or within 24 hours if they are off duty.

*Status***:**
Recommendation implemented, however the Berkeley Police Department is committed to continuing to explore additional lawful methods to identify and

address potentially racist behaviors or actions by our members. If at any time the police department becomes aware of any issues related to these concerns, the matter would be thoroughly investigated and employees will be held accountable.

Task Force Recommendation:
- **Require regular analysis of BPD stop, search, and use of force data;**

Implementation:
The Open Data Portal (ODP) is a public facing website that gives the public access to police data and is accessible through the City's website. This allows for open and independent analysis and review to foster police accountability and transparency.

ODP is operational and the data is updated approximately every 60 days. BPD is in the process of eliminating the 180-day time range that currently exist to allow for searches several years into the past. BPD is also in the process of expanding the call for service dataset to include all types of calls and creating a user-friendly interface for the system.

A vendor, Global Technologies Group, has been contracted to update the open data portal and work has begun.

Status:
Implementation in progress. BPD is committed to transparency and is continuously exploring different ways to provide the public with access to more police data. The anticipated completion date is prior to the summer of 2022, but is dependent on the technological needs and data analyst staffing levels.

Task Force Recommendations:
- **Make resources on police-civilian encounters more publicly available such as through RAHEEM.org;**
- **For <u>any individual detained</u>, BPD officers <u>shall provide</u> a business card with information on the commendation and complaint process with the Police Accountability Board and the Berkeley Police Department, Internal Affairs Bureau.**

Implementation:
In May of 2021, labels were printed for officers to place on the backside of their business cards containing the phone numbers to Internal Affairs and the Police Accountability Board. The label also contains a QR code to the Berkeley Police Department's website containing information on how to file a complaint. Officers were instructed to provide business cards with the labels to all detained

individuals pending new business cards. In addition to the information on how to make a complaint, a link to the ACLU webpage containing information on police-civilian encounters has been added to the Berkeley Police webpage.

Status:
Recommendation implemented. All business cards now printed for BPD have the same information as the labels. The QR code and BPD website provide community members with resources on police-civilian encounters. These resources ensure police accountability as well as ways the community can comment on the service BPD has provided.

Refer the following recommendations summarized below to the Reimagine Public Safety process

Task Force Recommendations:
- **Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins; Conduct a baseline community survey**

Implementation:
BPD's participation in work on the Reimagine Public Safety Task Force is on-going and while no formalized feedback systems are in place at this time, BPD remains responsive to answering questions, providing hands-on experience and discussing opportunities, impacts and effects of recommendations.

A community survey from the Reimagine Public Safety Task Force and National Institute for Criminal Justice Reform (NICJR) has been completed. This survey gauges the community's initial assessment on public safety in Berkeley to include what they thought was top priority, and where city resources were needed for better public safety. The results of this survey have been published. The final report is pending NICJR and Reimagine Task Force review.

*Status***:**
Implementation in progress. The Berkeley Police Department is committed to working collaboratively with the Reimagine Public Safety Task Force in accomplishing both recommendations.

Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway

Task Force Recommendation:

- **BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;**

Implementation:
The police department released the requested historical data in December of 2020. Approximately every 60 days BPD stop, arrest, and calls for service data are updated in the Open Data Portal.

Status:
Recommendation implemented. The police department is currently working with IT and a vendor to provide the public with access to more police data through the Open Data Portal. Building trust through transparency and allowing for individual analysis of police data is the cornerstone of the police department's work in building community trust and engaging in collaborative problem solving.

Task Force Recommendation:

- **Fund and implement a specialized care unit for mental health crises;**

Implementation:
The City has contracted with a consulting firm, RDA Consulting, to conduct a feasibility study for a specialized care unit. The study has concluded; refer to below supporting materials for link to the final report from RDA Consulting.

Status:
Implementation in progress. The police department will continue to collaborate with the city towards the development of a Specialized Care Unit. While the work to create a Specialized Care Unit continues, three community based contracts managed by the Health, Housing and Community Services Department have been initiated to provide interim services.

Task Force Recommendation:

- **Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.**

Implementation:
The City's Auditor's report was released which analyzed Computer Aided Dispatch data. Recommendations from this analysis were provided to the Police

Department and findings were referred to the Reimagine Public Safety Task Force.

As part of our continued efforts to collect more complete and comprehensive data, we have added additional disposition codes to our CAD program. Since July 1st,2021, we have begun collecting data on our police contacts with individuals experiencing homelessness and/or mental health crisis. This both addresses the recommendation by the City's Auditors report as well as the ongoing discussions around the need to better harness alternative and sometimes more appropriate resources to address incidents. In response to another recommendation by the City's Auditors report, we are expanding our data sets on the Open Data Portal to encompass more call types and eliminate the 180-day time range that currently exist to allow for searches several years into the past. This allows for the public to access more police data and for the Police Department to be more transparent in order to foster trust with our community.

Status:
Implementation in progress. During this quarter we successfully filled one of the two Council approved data analyst positions. One of the analyst tasks will be to conduct an ongoing analysis of police calls and responses. The work that the analyst will conduct will contribute to the police department's precision-based policing model as well as our personnel deployment strategies.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION
The Police Department will continue to work toward the full implementation of the Task Force recommendations.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
Staff time and additional training time to be determined at a later date.

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Supporting Materials:

1: Berkeley Police Policy 401
https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/401%20Fair_and_Impartial_Policing(1).pdf

2: Berkeley Police Policy 311
https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Search_and_Seizure.pdf

3: California Legislative Information
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=13519.4.&nodeTreePath=7.5.1.2&lawCode=PEN

4. Berkeley Police Policy 1029
https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1029%20Employee_Speech__Expression_and_Social_Networking.pdf

5. Berkeley Police Regulation Chapter 2
https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/PR%20Ch2_08Mar17.pdf

6. Reimagine Task Force and National Institute for Criminal Justice Reform (NICJR) Survey
 https://berkeley-rps.org/wp-content/uploads/2021/10/Berkeley-Community-Engagement-Report-v7.pdf

7. RDA Consulting Final Report on Specialize Care Unit
https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/Berkeley-MH-SCU_Final-Recommendations_FINAL.pdf